

Department of Energy

§ 1040.40

each course, service, and facility offered in or through the schools.

§ 1040.39 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on the basis of sex unless the different materials cover the same occupations and interest areas and use of the different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take action to assure itself that the disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take action to assure itself that the disproportion is not the result of discrimination on the basis of sex in counseling, appraisal materials, or by counselors.

§ 1040.40 Financial assistance.

(a) *General.* Except as provided in paragraphs (b), (c), and (d) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amounts or types of assistance, limit eligibility for assistance which is of any particular type or source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which

provides assistance to any of the recipient's students in a manner which discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for assistance which treats persons of one sex different from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which require that awards be made to members of a particular sex specified in those documents provided that the overall effect of the award of such sex-restricted scholarships, fellowships and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(a)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it shall provide reasonable opportunities for the awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams of members of each sex

to the extent consistent with this section and § 1040.44 of this subpart.

§ 1040.41 Employment assistance to students.

(a) *Assistance by recipient in making available outside employment.* A recipient which assists any agency, organization or person in making employment available to any of its students—

(1) Shall assure itself that the employment is made available without discrimination on the basis of sex; and

(2) Shall not render services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient which employs any of its students shall assure itself that all employment is made available without discrimination on the basis of sex.

§ 1040.42 Health and insurance benefits and services.

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex. This section is not to prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

§ 1040.43 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.*

(1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extra-curricular activity, on the basis of the student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require the student to obtain the certification of a

physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as the certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its educational program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section, shall ensure that the instructional program in the separate program is comparable to that offered to non-pregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy which the recipient administers, operates, offers or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for a period of time considered medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

§ 1040.44 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club, or intramural athletics offered by the recipient, and no recipient shall provide any athletics separately on the basis of sex.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of